BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Section 273(d)(5)	)	
of the Communications Act of 1934	)	GC Docket No. 96-42
as amended by the Telecommunications	)	
Act of 1996 -- Dispute Resolution	)	
Regarding Equipment Standards	)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

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April 1, 1996

SUMMARY

In its notice to implement new section 273(d)(5) of the Communications Act, the Commission proposes that "binding arbitration" be used as the dispute resolution procedure to be followed by a non-accredited standards development organization that sets industry -wide standards and generic requirements for manufacturing telecommunications equipment if the interested industry parties cannot agree on a dispute resolution process. The members of TIA believe binding arbitration as a dispute resolution method is an acceptable method for resolving contractual disputes in select instances:

- Where the number of parties is limited;
- Where "splitting the difference" between the parties is an acceptable resolution; and
- Where the subject matter lends itself to easy and rapid understanding by an impartial third party.

None of those criteria, however, applies to the telecommunications or customer premises equipment standards or generic requirements processes. It is for that reason TIA believes the Commissions' proposal is inappropriate.

The process of establishing industry-wide standards or generic requirements necessarily involves a great many interested parties and deals with highly technical matters about increasingly complex equipment. As a result, for accredited standards development organizations (SDOs), an open, consensus-based process has developed. This approach permits all interested parties to participate and uses procedures that foster resolution by technical experts based upon hard evidence, rather than just some compromise for the sake of compromise. TIA believes that this industry-accepted approach provides the correct model for the Commission to follow where non-accredited organizations are involved. As such, TIA endorses the approach advanced by Corning in its March 21, 1996 comments to the Commission, which employs the "accelerated consensus" approach used by SDOs accredited by the American National Standards Institute.

Finally, TIA wishes to clarify that the term "funding party" as used in section 271(d)(4)(A) exists solely for the purpose of demonstrating that a party has a bona fide interest in the proceeding. It is not included as a revenue generation or expense recovery mechanism for the non-accredited standards development organization.

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The Telecommunications Industry Association, by its attorney, submits the following comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-captioned proceeding.[1]

I. INTRODUCTION

The Telecommunications Industry Association has a membership of nearly 600 U.S. companies that manufacture and provide communications technology equipment, products, systems, distribution services, and professional services throughout the world. As a result of their extensive and intense involvement in the telecommunications equipment industry, the members of TIA have a great familiarity with and appreciation of the equipment standards, requirements, and certification processes. They believe it is critical that these processes be carried out efficiently, effectively, and objectively.

[1] Notice of Proposed Rulemaking, GC Docket No. 96-42. In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards, FCC 96-87, released March 5, 1996, 61 Fed. Reg. 9966 (March 12, 1996).

It is for these reasons that TIA decided to participate in the Congressional debate on section 273(d) -- "Manufacturing Limitations for Standard-Setting Organizations" -- of the Telecommunications Act of 1996. TIA now seeks to ensure that the Commission's implementation of this provision of the Act reflects the law and the realities of the industry and marketplace. TIA is especially concerned that the procedures adopted by the Commission as required by the new law for non-accredited standards development organizations be consistent with successful models now being employed in the marketplace. This will increase the opportunities for successful implementation of the Act, thus enhancing competition in the industry.

II. PROPOSED REGULATIONS: BINDING ARBITRATION PROPOSAL

In its notice to implement section 273(d)(5), the Commission proposes that "binding arbitration" be used as the dispute resolution procedure to be followed by a non-accredited standards development organization that sets industry -wide standards and generic requirements for manufacturing telecommunications equipment if the interested industry parties cannot agree on a dispute resolution process[2]. The Commission's notice supports this proposal by emphasizing that binding arbitration appears to be the only feasible procedure that can be accomplished within the statute's 30-day time requirement. The members of TIA are very familiar with binding arbitration as a dispute resolution method. It is an acceptable method for resolving contractual disputes between or among a limited number of parties, where "splitting the difference" between the parties is an acceptable resolution, and where the subject matter lends itself to easy and rapid understanding by an impartial third party. None of those criteria, however, applies here. It is for that reason TIA believes the Commission's proposal is inappropriate.

The process of establishing industry-wide standards or generic requirements necessarily involves a great many interested parties and deals with highly technical matters about increasingly complex equipment. As a result, for accredited standards development organizations (SDOs), an open, consensus-based process has developed. This approach permits all interested parties to participate and uses procedures that foster resolution by technical experts based upon hard

[2] NPRM at ¶4.

evidence, rather than just some compromise for the sake of compromise. TIA believes that this industry-accepted approach provides the correct model for the Commission to follow where non-accredited organizations are involved. As such, TIA generally endorses the approach advanced by Corning in its March 21, 1996 comments to the Commission[3] .

The Corning proposal follows upon the approach employed by SDOs accredited by the American National Standards Institute (ANSI). This approach can be best characterized as open and non-discriminatory with decisions reached by consensus[4] . In addition to having experience in resolving the types of disputes that may arise, these ANSI accredited organizations are composed of individuals with the requisite technical expertise. Finally, this approach lends itself to the development of a consensus regarding the proposal of the non-accredited SDO based on hard evidence -- and not to a forced selection of it where uncertainty may be too great. Where a consensus cannot be achieved in the 30-day time limit specified by the statute, the non-accredited SDO proposal would be considered unresolved, but the standard or generic requirement, of which the disputed and unresolved proposal is merely an element, would be allowed to go forward without delay. The disputed and unresolved proposal would then be open for resolution by the accredited SDO or the non-accredited SDO sometime in the future. It is for these reasons that TIA generally supports the Corning proposal that the Commission use these ANSI accredited organizations to settle disputes where the parties have not agreed on a method.

In supporting the Corning proposal, TIA wishes to add the following refinement. Section 273(d)(4)(A) of the Act requires: a "public invitation to any interested party to fund and participate" in the process[5] ; the comments of "any funding party" be included in the publication of the final text[6] ; and "any funding party" have the ability to refer matters in disagreement to a dispute resolution process[7] . These references to funding by a party have only one purpose: to ensure that

[3] TIA suggests two technical corrections to the flow chart of Corning's Proposed Alternative Dispute Resolution Process included in its submission: in the fourth box, "FP" should be changed to "DP"; and, in the footnote, "Open Issues List", "only" should be struck.

[4] Under the Corning proposal, the disputing parties would not participate in the accredited SDO's vote on the item in dispute. The term "consensus" would thus mean those participating in the accredited SDO debate minus the disputing parties.

[5] 47 U.S.C. §273(d)(4)(A)(ii).

[6] 47 U.S.C. §273(d)(4)(A)(iv).

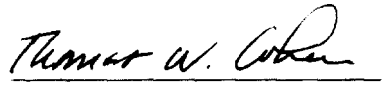
[7] 47 U.S.C. §273(d)(4)(A)(v).

a party has a genuine interest in the proceeding. They were not included as a way to increase the revenues or offset expenses of the non-accredited SDO. It is for that reason that a reasonable amount should not be defined as the amount contributed today by any party funding these activities, but rather as any amount that demonstrates the party shows a responsible interest in the proceeding. This would, for instance, permit a party to meet this requirement by posting a performance bond.

CONCLUSION

For the reasons described in this submission, the Telecommunications Industry Association urges the Commission to forgo the binding arbitration approach advanced in its notice and, instead, adopt Corning's "accelerated consensus" procedure based on industry-accepted models as the "default" procedure to be used in resolving disputes that occur under section 273(d)(4) of the Communications Act.

Respectfully submitted,



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April 1, 1996

Certificate of Service

I, Allen Kratz, do hereby certify that on this first day of April, 1996, a copy of the foregoing "Comments of the Telecommunications Industry Associaton in Response to Notivce of Proposed Rulemaking" was mailed by U.S. first-class mail, postage prepaid, to the parties listed on the attached service list.

Allen Kratz

April 1, 1996

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